

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

VANESSA FONTENOT, ET AL.

CIVIL ACTION NO. 15-2150

VERSUS

JUDGE S. MAURICE HICKS, JR.

RUSSELL BUCHANAN, ET AL.

MAGISTRATE JUDGE HANNA

MEMORANDUM RULING

On May 13, 2016, Magistrate Judge Hanna issued a Report and Recommendation recommending that the Motions to Dismiss (Record Documents 11 and 12) filed by Defendants Russell Buchanan, Matthew Scott, Tyler Scott, Carroll Stelly, Joey Thibodeaux, and the Police Department of Rayne be granted. See Record Document 21. In the Judgment accompanying the instant Memorandum Ruling, the Court adopts the Magistrate Judge's Report and Recommendation, thereby granting Defendants' Motions to Dismiss.

Additionally, however, Plaintiffs added an additional "John Doe" defendant, XYZ Insurance Co., in their amended complaint. See Record Document 19. This defendant was not addressed in the Report and Recommendation because its identity has not been identified and it has not been served. XYZ Insurance Co. was added as a defendant on April 7, 2016. See Record Document 18. A summons was issued on the same day. See Record Document 19. No amended complaint has been filed to this date correctly identifying this defendant, nor has an executed return of summons or waiver of service been filed with the Court showing that this defendant has been served within the 90-day period required by Federal Rule of Civil Procedure 4(m). Because more than 90 days have passed since the filing of the amended complaint adding XYZ Insurance Co. without service of the summons and complaint or identification of the real defendant, all claims

against XYZ Insurance Co. are dismissed without prejudice. See Jones v. Johnson, 2002 U.S. Dist. LEXIS 12749 at *4-5 (N.D. Tex. 2002); Clark v. McMillin, 932 F. Supp. 789, 794 (S.D. Miss. 1996); Redd v. Dougherty, 578 F. Supp. 2d 1042, 1049 (N.D. Ill. 2008).

THUS DONE AND SIGNED at Shreveport, Louisiana, on this the 7th day of December, 2016.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE